IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

TRC.No. 394 of 2002(M)

ORDER DATED 30.3.2002 IN TA.29/1999 OF KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH-II,ERNAKULAM

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PETITIONER/APPELLANT/ASSESSEE

M/S. HARRISONS MALAYALAM LIMITED,
WILLINGDON ISLAND, KOCHI-3, REPRESENTED BY
ITS COMPANY SECRETARY, MR.P.A.KRISHNAMOORTHY.

BY ADV. SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENT/ RESPONDENT:

STATE OF KERALA.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS TAX REVISION CASE HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.394 of 2002

Dated, this the 24th day of July, 2007

ORDER

H.L.Dattu, C.J.

The assessee is a company. It owns agricultural lands. The agricultural income of the assessee is brought to tax under the provisions of the Agricultural Income Tax Act, 1950 ('Act of 1950' for short). In this tax revision proceedings we are concerned with the assessment year 1990-91.

2. For the previous year for the assessment year 1990-91, the assessee had filed its returns for a period of 12 months. However, for the assessment year 1990-91, the returns were made for a period of three months, for the months of April, May and June 1989. The assessing authority while quantifying the tax liability under the provisions of the Act, had assessed the income for the 12 months. Before the assessing authority it was the stand of the assessee that in view of Section 2(o) of the Act, the assessee has an option to vary its previous years. This stand of the assessee was rejected by the assessing authority on the ground that the assessee had not taken prior consent of the Agricultural Income Tax Officer for changing the previous year. This view of the assessing authority is confirmed by the first appellate authority as well as by the Tribunal. The findings and conclusions reached by the Tribunal in this regard are at paragraphs 41 and 42 of the order passed by the Tribunal. The said findings of the Tribunal are as under:

> "41. AITA 29/99. In this appeal the original assessment for the year 1990-91 is under challenge. Adopting of 12 months period ending on 31.3.1990 as the previous year relevant to the assessment year 1990-91 is what is mainly under challenge in this appeal. As per the return filed by the assessee previous year relevant to the assessment year 1990-91 was 3 months

period ending on 30.6.1989, as according to the assessee it made up its accounts for 3 months ending on 30th June 1989 and exercised the option to adopt the previous year upto a date other than 31st March preceding the year of assessment. But the assessing authority did not accept the 'previous year' of the assessee as 3 months ending on 30.6.1989, because the assessee already exercised its option to treat the previous year as ending on 31st March preceding the year of assessment and it did not obtain the consent of the assessing authority to vary the period upto a date other than 31st March. Accordingly, for the relevant assessment year, the assessing authority computed the agricultural income of the assessee for 12 months upto 31.3.1990 as against 3 months upto 30.6.1989 reported by the assessee. The 1st appellate authority also agreed with the assessing authority in this regard. The concurrent finding of the authorities below is challenged by the assessee in this 2nd appeal.

42. The question for consideration is whether the authorities below were justified in adopting 12 months period preceding the year of assessment as the previous year of assessee as against 3 months period upto 30.6.1989 adopted by the assessee. As per Section 2(o) of the AIT Act 1950 'previous year' means

"(i) the twelve months ending on the 31st day of March preceding the year for which the assessment is to be made or, if the accounts of the assessee have been made upto a date within the said twelve months in respect of any year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up;

Provided that, if the option has once been exercised by an assessee, he shall not exercise it again so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Agricultural Income-tax Officer and upon such conditions as he may think fit."

It is not disputed that till the assessment year 1990-91 the assessee was maintaining accounts upto 31st March. Therefore till the assessment year 1990-91 previous year of the assessee was 12 months period ending on 31st March preceding the year of assessment. Therefore the assessee is deemed to have opted for the previous year as 12 months period ending on 31st March. Therefore as per the proviso to Section 2(o) of the AIT Act 1950, if the assessee wants to vary 'previous year' or to switch on to a period other than 12 months preceding 31st March, it can do so only with the consent of the assessing officer, who may impose such conditions as he may think fit. The contention of the assessee, that it has never exercised its

> option and therefore it is entitled to exercise the option to switch over to a period other than the date ending on 31st March, is not acceptable, in so far as all along the 'previous year' of the assessee was 12 months period ending on 31st March preceding the year of assessment. It is true that in Esthuri Aswatharsh Vs. CIT, Mysore 60 ITR 411 the Supreme Court held that 'previous year' could be less than or more than 12 months. But that legal position is not the question here. Here the problem is that the assessee did not obtain the consent of the assessing authority to vary 'previous year', as enjoined under the proviso to Section 2 (o) of the AIT Act. In the facts and circumstances of this case we do not think that the assessee is entitled to find support from the decision of Gujarat High Court in 68 ITR 136 and Bombay High Court in 165 ITR 217, for the reason that the questions which came up for consideration in those cases are different from the issue raised in this appeal. We therefore agree with the finding of the authorities below that the 'previous year' of the assessee relevant to the assessment year 1990-91 as 12 months period ending on 31st March 1990. The computation of agricultural income on that basis as done by the assessing authority is therefore not liable to be interfered with. This issue is accordingly answered against the assessee."

3. The assessee being aggrieved by the order passed by the Tribunal has filed this revision petition under Section 78 of the Agricultural Income Tax Act, 1963.

4. The assessee has raised two issues for our consideration and decision. They are as under:

> "i) in the facts and circumstances of the case ought not the tribunal have allowed the case of the petitioner that they were entitled to have a previous year 3 months as provided under Section 2(o) of the AIT Act, 1950?
>
> ii) In the facts and circumstances of the case ought not the Tribunal have held that the proviso to Section 2(o) of the AIT Act 1950 is not applicable to the petitioner?"

5. Section 2(o) of the Act of 1950 defines the meaning of the expression 'previous year'. The said provision is relevant for the purpose of this case. Therefore, it is extracted:

> **"2. Definitions.**- In this Act, unless there is anything repugnant in the subject or context-.
>
> (o) 'Previous year' means -
>
> (i) the twelve months ending on the 31st day of March preceding the year for which the assessment is to be made or, if the accounts of the assessee have been made upto a date within the said twelve months in respect of any year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been so made up:
>
> Provided that, if the option has once been exercised by an assessee, he shall not exercise it again so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Agricultural Income-tax Officer and upon such conditions as he may think fit; or
>
> (ii) such period as may be determined by the Commissioner in the particular case of any person or class of persons."

6. Sub clause (i) of Section 2(o) of the Act had come up for consideration before a Division Bench of this Court in the case of **Commissioner of Agricultural Income Tax** v. **M.K.Parameswaran** [1980 (126) ITR 143]. In the said decision the Court has stated as under:

> "From the definition, it appears to us that the previous year can be reckoned in two parts; one, as twelve months ending on the 31st day of March preceding the year for which the assessment is to be made; or, secondly, at the option of the assessee, as the year ending on the day up to which his accounts have been made up, provided the accounts were made up to a date within the said twelve months in respect of any year ending on a day other than 31st March. In order to have the benefit of this alternative date mentioned by the second part of the definition, it is quite plain that the necessary condition precedent is that the assessee must have accounts, and the said accounts must have been made up in the particular fashion indicated. In the case before us, it is admitted that the assessee did not have any accounts at all. The question of making them up in the fashion indicated could not obviously arise; and the latter part of the definition of the previous year would, therefore, be inapplicable. The former part alone would apply. The Tribunal was, therefore, wrong in its conclusion that as the accounts of the joint family were being made up to

> the end of the Malayalam era and as the joint family had been assessed on that footing, the assessee, despite his not maintaining accounts, was entitled to have the previous year reckoned as the year according to the Malayalam era."

7. Sri.Anil D.Nair, learned counsel for the assessee would contend that for the first time for the assessment year 1990-91, the assessee had filed its returns for a period of three months and, therefore, the assessing authority could not have computed the tax liability under the provisions of the Act of 1950 for the entire 12 months on the sole ground that the assessee had not taken the prior consent of the Agricultural Income Tax Officer . Alternatively, the learned counsel would submit that it is for the first time for the assessment year 1990-91 that the assessee had filed its return for a period of three months and if for any reason the assessee wants to change the previous year for a period of three months, then only the question of obtaining the consent of the Agricultural Income Tax Officer as contemplated in the proviso to Section 2(o) of the Act would arise and therefore, the findings and conclusions reached by the Tribunal is erroneous and contrary to the plain language of the section itself.

8. At first blush, the arguments canvassed by Mr.Anil D.Nair, the learned counsel for the petitioner, appears to be attractive, but on a deeper consideration of the submission so made, we feel that the said submission is devoid of merits.

9. The proviso specifically states that once an option has been exercised by the assessee, he shall not exercise it again so as to vary the meaning of the expression 'previous year' without the consent of the Agricultural Income Tax Officer. That only means, an option should have been exercised by the assessee and that option should have been accepted by the

assessing officer and if for any reason if the assessee wants to vary that option, then again he requires the consent of the Agricultural Income Tax Officer. It is all that can be inferred from the language employed in the proviso to Section 2(o) of the Act of 1950. In the instant case, the assessee was filing its returns for the previous years for a period of 12 months and this was being accepted by the Assessing Officer. That only means, that was the option exercised by the assessee and it was accepted by the assessing authority for all the previous years. If for any reason, the assessee wants to file the returns in any other form, the assessee ought to have taken the prior permission of the Agricultural Income Tax Officer. Since that permission had not been obtained, the assessing authority was justified in quantifying the tax liability of the assessee under the provisions of the Agricultural Income Tax Act taking 12 months as the previous year. IIn view of the above, we are of the opinion, the findings and the conclusions reached by the Tribunal is neither erroneous nor contrary to the language employed in the statute. Therefore, both the questions of law framed by the assessee require to be answered against the assessee and in favour of the revenue.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.